



## Legislation Text

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**File #:** Res 0098-2022, **Version:** \*

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### Res. No. 98

Resolution calling on the State Legislature to pass, and the Governor to sign, A. 8681/S. 7527, to prohibit prosecutors from using creative expression as evidence against a criminal defendant without clear and convincing proof that there is a literal, factual nexus between the creative expression and the facts of the case.

By Council Members Williams, Hanif, Stevens, Riley, Restler, Brannan, Farías, Louis, Avilés, Narcisse, Joseph, Ayala, Rivera, Richardson Jordan, Bottcher, Sanchez, Brooks-Powers, Abreu, Menin, Hudson, Krishnan and Nurse

Whereas, A. 8681, introduced by Assembly Member Catalina Cruz and pending in the New York State Assembly, and companion bill S. 7527, introduced by State Senator Brad Hoylman and pending in the New York State Senate, seek to amend the Criminal Procedure Law by prohibiting prosecutors from using creative expression as evidence against a criminal defendant without clear and convincing proof that there is a literal and factual nexus between the creative expression and the facts of the case, in an effort to protect freedom of expression in New York State; and

Whereas, Article I, Section 8 of the New York State Constitution protects the right to freely express oneself, whether through speaking, writing or other creative outlets, enhancing protection of free expression guaranteed in the First Amendment of the United States Constitution; and

Whereas, According to the New York State Court of Appeals, New York State is “a cultural center for the Nation” that has “long provided a hospitable climate for the free exchange of ideas”; and

Whereas, In criminal proceedings in the United States, courts have perpetrated a disturbing trend of admitting creative expression into evidence as proof of wrongdoing; and

Whereas, Admitting creative expression into evidence to convict criminal defendants has a chilling effect on fundamental rights which the Federal and New York State Constitutions safeguard, and exacerbates

bias against black and brown defendants who exercise their rights in particular forms of expression, like rap music, that are the subject of discriminatory associations linking black and brown people with criminal conduct; and

Whereas, Standards for the admissibility of evidence in New York State criminal proceedings do not adequately protect a defendant's creative expression from being used against them; and

Whereas, An enhanced standard demanding clear and convincing proof that creative expression has a literal and factual nexus to the facts of the case would provide stronger protection of fundamental rights and would mitigate the risk such evidence poses for exacerbating racial biases that judges and juries show against black and brown criminal defendants, especially; now, therefore, be it

Resolved, That the Council of the City of New York calls on the State Legislature to pass, and the Governor to sign, A. 8681/S. 7527, to prohibit prosecutors from using creative expression as evidence against a criminal defendant without clear and convincing proof that there is a literal, factual nexus between the creative expression and the facts of the case.

LS #7182  
3/15/22  
NC